

Application No. 10/511,505
Amendment dated December 15, 2008
After Final Office Action of October 15, 2008

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Docket No.: 62302(70403)

REMARKS

Claims 38-61 are pending in the instant application. Support for these amendments can be found throughout the specification and in the original claims of the application. No new matter is introduced. Applicants further request reconsideration of the subject application based on the following remarks.

Amendment of any claim herein is not to be construed as acquiescence to any of the rejections/objections set forth in the instant Office Action, and was done solely to expedite prosecution of the application. Applicants make these amendments without prejudice to pursuing the original subject matter of this application in a later filed application claiming benefit of the instant application, including without prejudice to any determination of equivalents of the claimed subject matter.

Rejection under 35 U.S.C. § 102(b)

Claims 38-45, 47-49, 56-58 and 61 are variously rejected as allegedly anticipated by WO 96/03768 ("*Vestal et al.*"). Applicants traverse.

In particular, the Examiner considers that *Vestal et al.* discloses the subject matter of independent claims 38, 39 and 40. In particular, it is asserted in the Action that a standard or CRM is a sample with a known outcome and is still a sample that can be considered to be part of a plurality of samples to be analyzed by the system claim of *Vestal*. Applicants submit that this assertion overlooks an element of Applicants' claimed subject matter (as amended).

Applicants submit that upon a review of *Vestal et al.* it is clear that the samples are pre-mixed prior to the addition of the sample to the matrix. *Vestal et al.* discloses that the internal standards must be pre-mixed with the sample prior to addition to the matrix. In particular, see page 10, lines 13 to 19. This is significantly different than using CRM to quantify a plurality of elements in a sample, wherein the CRM is located on a separate matrix or is preloaded into the matrix.

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Further, the pre-mixed samples may contain internal standards. Internal standards are significantly different to Certified Reference Material (CRM), which is intended to provide an accurate reference medium under a wide range of conditions, where internal standards (which are not certified for this purpose) would simply be inappropriate. Thus, Applicants' claimed subject matter is distinguishable from Vestal *et al.* in that they differ in both the materials used and their respective function, as well as being pre-mixed or not.

Accordingly, claims 38, 39 and 40 have been amended to recite that the CRM is either added to a separate collection matrix or is pre-loaded into the collection matrix prior to the addition of a sample of interest. As such, Applicants submit that Vestal *et al.* does not recite each and every element of Applicants' claimed subject matter (e.g., a CRM added to a separate collection matrix or is pre-loaded into the collection matrix prior to the addition of a sample of interest), and therefore is not anticipatory of Applicants' claimed subject matter. For at least the above reasoning, Applicants respectfully request that the rejection be withdrawn.

Rejection under 35 U.S.C. § 103(a)

Claim 46 is rejected as allegedly rendered obvious in view of Vestal *et al.* in view of Burkhanova. Claims 50-51 are rejected as allegedly rendered obvious in view of Vestal *et al.* in view of Hillenkamp. Claims 52-55 and 59-60 are rejected as allegedly rendered obvious in view of Vestal *et al.* Applicants traverse each rejection.

For reasons including those delineated above, Applicants submit that Vestal *et al.*, does not teach or suggest each and every element of Applicants' claimed subject matter (e.g., a CRM added to a separate collection matrix or is pre-loaded into the collection matrix prior to the addition of a sample of interest), and therefore does not render obvious Applicants' claimed subject matter. Moreover, neither Burkhanova nor Hillenkamp teach or suggest elements of Applicants' claimed subject matter that Vestal *et al.* fail to teach (e.g., a CRM added to a separate collection matrix or is pre-loaded

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into the collection matrix prior to the addition of a sample of interest). Applicants' submit that Vestal *et al.*, either alone or in combination with either Burkhanova or Hillencamp, does not establish a *prima facie* case of obviousness as it (and they in combination) fail to teach or suggest each and every claim element of Applicants' instant claims. As such, Applicants respectfully request that the rejections be withdrawn.

In view of the above remarks, Applicants believe the pending application is in condition for allowance. Should any of the claims not be found to be allowable, the Examiner is requested to telephone Applicants' undersigned representative at the number below. Applicants thank the Examiner in advance for this courtesy.

The Director is hereby authorized to charge or credit any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1105, under Order No. 62302(70403).

Dated: December 15, 2008

Respectfully submitted,

By

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